

#### § 516.34

it may be in the Government's best interests to enter into an agreement with the private attorney to include the Army's medical care claim.

(d) *Statute of limitations.* There is a three year statute of limitations for actions in favor of the U.S. for money damages founded upon tort. (28 U.S.C. 2415(b)). Limitations periods can vary, however, depending upon the theory of liability and the jurisdiction involved. RJAs must be alert to the applicable period of limitations. A case referred for litigation should arrive at Litigation Division at least 6 months before the expiration of the limitations period.

(e) *Reporting of recoveries.* Amounts recovered through litigation will be reported to USARCS by Tort Branch, Litigation Division, or, where referred directly to a U.S. Attorney or the Nationwide Central Intake Facility (NCIF), by the responsible RJA.

#### § 516.34 Referral of medical care and property claims for litigation.

(a) *Criteria for referral.* The RJA will forward the claims file and a litigation report (See § 516.35 of this part) through USARCS to Litigation Division when the claim has not been resolved administratively and any of the following conditions exist:

- (1) The claim exceeds \$5,000;
- (2) It involves collection from the injured party or his attorney;
- (3) The claim raises an important question of policy; or,
- (4) There is potential for a significant precedent.

(b) *Alternative methods.* When none of the conditions cited in the preceding subparagraph are present, the RJA may refer the claim directly to the U.S. Attorney for the district in which the prospective defendant resides. Similar property claims may be referred through USARCS to DOJ's Nationwide Central Intake Facility (NCIF) rather than directly to the U.S. Attorney. Notice of all such referrals shall be provided through USARCS to Tort Branch, Litigation Division. The RJA should be ready to provide support to the U.S. Attorney if requested.

(c) *Closing Files.* A file referred directly to the U.S. Attorney will be closed if the U.S. Attorney determines

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further action is unwarranted. If the RJA disagrees, the file should be forwarded with the RJA's recommendation through USARCS to Litigation Division.

#### § 516.35 Preparation of claims for litigation.

(a) *General.* In preparing a referral for litigation the RJA will ensure the file contains at least the following:

(1) A litigation report (See § 516.23 of this part) that demonstrates a factual basis for the claim and a theory of recovery under applicable state law. (See Fed. R. Civ. P. 11)

(2) Copies of all medical records and bills reflecting the reasonable value of the medical care furnished to the injured party, including DA Form 2631-R (Medical Care-Third Party Liability Notification), and DA Form 3154 (MSA Invoice and Receipt). These documents should be authenticated as necessary on a DA Form 4.

(3) Copies of all documents necessary to establish the value of lost or damaged property.

(b) *Transmittal letter.* The letter of transmittal referring the claim for litigation should briefly summarize the facts giving rise to the claim and the collection actions previously taken by the Army and the injured party.

#### ASSERTION OF OTHER CLAIMS

#### § 516.36 Referral to Litigation Division.

(a) *General.* The majority of cases filed on behalf of the United States will fall under this subpart E. All other civil cases which cannot be resolved administratively or by direct referral to DOJ will be forwarded through channels to Litigation Division with a litigation report. (See § 516.23 of this part).

(b) *Government contractors.* It may be in the Government's best interest to authorize a Government contractor, whose contract provides for the reimbursement of necessary legal expenses, to employ private counsel to initiate legal proceedings against a third party. To obtain authorization to employ private counsel in such instances the contractor should follow the procedures in § 516.21(c) of this part.